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The Massachusetts Commission AGAINST Discrimination.

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The Commonwealth of Massachusetts
Commission Against Discrimination

The Massachusetts Commission Against Discrimination (MCAD) is the civil rights law enforcement agency of the Commonwealth. The Commission has the authority to investigate complaints and take appropriate action in cases of illegal discrimination in the areas of employment, housing, public accommodations, and credit. It also has the authority to adopt rules and regulations and to monitor and assist businesses and government in complying with the law.

One of the oldest civil rights agencies in the country, the Commission was created by statute in 1946 and serves as the focal point of civil rights activity in the state. It has three Commissioners, a professionally trained staff, four offices across the Commonwealth, and statewide and regional advisory councils.

MCAD



The Fair Practice Law

The Fair Practice Law prohibits discrimination in employment on the basis of race, color, religious creed, national origin, sex, age, ancestry, or handicap.

The Law Prohibits Discrimination by

Employers
Labor Organizations
Employment Agencies
Insurance Bonding Companies

Specific Practices Prohibited in Hiring, Discharge, Terms and Conditions

- cannot print or circulate any advertisement or use any application form which directly or indirectly specifies any limitations on the basis of membership in the protected groups.
- cannot discharge or refuse to hire any individual on the basis of their membership in a protected group.
- cannot discriminate against any individual in matters relating to compensation, terms, conditions, or privileges of employment because of their membership in a protected group.

While the above provisions on hiring, discharge, and terms and conditions apply to all protected groups, there are further provisions and interpretations of the law which affect only certain protected groups.

These provisions deal with; maternity; religious observance; criminal records; age; sexual harassment; and handicap.

Religious Observance

Both public and private employers must make reasonable accommodations to permit employees or prospective employees to practice their creed or religion including the observance of a sabbath and holy days.

An employee must give at least ten days notice in advance of each absence and has the burden of proof as to the required practice of his religion or creed.

Reasonable accommodation means such accommodation as would not cause undue hardship in the conduct of the employer's business.

The employer has the burden of providing undue hardship.

Handicap

Discrimination in employment against the handicapped was statutorily added to the Commission's jurisdiction in March of 1984. According to the statutory definition, "a handicapped person means any person who has a physical or mental impairment which substantially limits one or more of such persons major life activities, has a record of such impairment, or is regarded as having such impairment."

Employers cannot discriminate against a qualified handicapped person by dismissing or refusing to hire, rehire or promote said person if:

- 1) they are capable of performing the essential functions of the position involved;
- 2) with reasonable accommodation;
- 3) unless the employer can demonstrate that the accommodation required would impose undue hardship.

The statute further provides that the following factors are to be considered in determining undue hardship:

- 1) the overall size of the employer's business with respect to:
 - number of employees;
 - number and type of facilities; and
 - size of budget or available assets
- 2) the type of the employer's operation, including the composition and structure of the employer's workforce and;
- 3) the nature and cost of the accommodation needed.

Physical or mental job qualification requirements must be functionally related to the specific job for which the individual is being considered.

Employers cannot make pre-employment inquiries as to whether:

- 1) the applicant is a handicapped individual; or
- 2) as to the nature or severity of the handicap except for affirmative action purposes.

An employer may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job. Medical examinations are not to be conducted prior to the offer of employment.

The Fair Housing Law

Both state and federal laws (Title VIII) prohibit discrimination in housing.

Massachusetts Fair Housing Law prohibits discrimination in housing on the basis of:

RACE, COLOR, RELIGIOUS CREED,
NATIONAL ORIGIN, SEX, AGE, CHILD-
REN, ANCESTRY, MARITAL STATUS,
VETERANS STATUS, PUBLIC
ASSISTANCE RECIPIENCY, BLINDNESS,
OR DEAFNESS.

The Law Prohibits

Owners
Lessees
Sublessees
Licensed real estate brokers
Assignees
Managing agents
Unit owners
Any others with authority to sell, rent, lease,
or authority to negotiate to sell, rent, or lease.
Agents of the above

from refusing members of the protected group
the:

- right to buy
- right to lease
- right to rent
- right to ownership
- right to possession

Property Covered

- 1) All housing accommodations in the Commonwealth intended for human habitation with the exception of renting or leasing of a single apartment in a two-family dwelling where the other apartment is occupied by the owner.
- 2) Residentially zoned land and house lots; single family, two-family, and three-family homes; apartments and tenement houses; multi-family dwellings and housing developments; public housing and publicly assisted housing; condominiums and housing cooperatives.
- 3) Commercial space which is available to the public for sale, lease, or rental by any means of public offering.
- 4) Any land intended for the erection of any housing accommodation.

Sexual Harassment

The Commission has taken the position that sexual harassment is a form of sex discrimination and that such complaints will be investigated by the Commission.

The Commission follows the EEOC Guidelines which define sexual harassment as including:

- unwelcomed sexual advances,
- requests for sexual favors,
- other verbal or physical conduct of a sexual nature where:
 - 1) Submission to such conduct is used as the basis for employment decisions affecting the employee or
 - 2) Submission to or rejection of such conduct is used as the basis for employment decisions affecting the employee; or
 - 3) Such conduct has the purpose or effect of substantially interfering with an employee's performance or creating an intimidating, hostile or offensive working environment.

An employer is responsible for the acts of agents or supervisory employees even if it did not know of the conduct.

An employer is liable for acts of other employees if it (or its agents or supervisory employees) knew or should have known of the harassing conduct, unless the employer takes immediate and appropriate corrective action.

Criminal Records

It is illegal to request information or to discriminate against a job applicant for failure to furnish information, written or oral, concerning:

- 1) An arrest, detention, or disposition regarding a violation of law in which no conviction resulted.
- 2) A first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violation, affray or disturbance of the peace.
- 3) A conviction for a misdemeanor when the date of conviction or end of period of incarceration, if any, occurred more than five (5) years prior to the employment application and the applicant has not been convicted of any offense within the five (5) years immediately before the date of application.

Maternity

M.G.L. c.151B and M.G.L. c.149 105D specifically address issues surrounding maternity.

In order for the coverage to apply, a woman must:

- 1) have completed her probationary period of no more than six (6) months or, if there is no probationary period, have been employed for at least three (3) consecutive months.
- 2) give two (2) weeks notice of her expected departure and notice that she intends to return.

If the above conditions are met, it is illegal to:

- 1) require a woman to leave her job at some arbitrary stage in her pregnancy or refuse to let her return to work until a specified time set by the employer;
- 2) refuse to grant a female employee at least eight weeks of leave for purpose of child birth, or for adopting a child under 3 years of age.
- 3) treat her absence differently than any other absence due to temporary medical disabilities;
- 4) fail to return her to the same or a similar position unless other employees of equal length or service credit and status in the same or similar positions have been laid off.

Any employer policy or collective bargaining agreement which provides for greater or additional benefits than those described above must be adhered to.

Age

As of October 16, 1984, MCAD's age law was amended to define age as "any duration of time since an individual's birth of greater than forty years." As a result, employers in the public and private sector cannot discriminate on the basis of age in hiring, termination, compensation, or terms, conditions and privileges of employment unless:

- 1) pursuant to a general law of the Commonwealth (i.e. public safety positions);
- 2) to require the compulsory retirement of any person who is sixty-five, who was for a two-year period immediately before retirement employed as a bona fide executive, and who will receive annual retirement benefits of at least \$40,000;
- 3) to require the retirement of a person who is 70 years of age serving under a contract of unlimited tenure at an independent institution of higher education.

PRE-EMPLOYMENT QUESTIONS

Categories	Employers May Ask	Employers May NOT Ask
Age	Are you a minor (under the age of 18)? May I have proof that you are 18 or over? Questions on age are allowed if based on a bona fide occupational qualification previously granted by the Commission or if necessary to satisfy provisions of state or federal law; i.e., certain public safety positions presently have age limit for hiring and retiring.	When were you born? How old are you?
Ancestry or National Origin	No Questions	What is your language ancestry, or national origin?
Birthplace	No Questions	Where were you born? Where was your husband/wife born? Where were your parents (or other close relatives) born?
Citizenship	Are you a citizen? Do you intend to become a citizen?	Are your parents/husband/wife citizens? Are you/your parents/husband/wife naturalized or native born citizens? When did you/they become citizens?
Character	Are you honest? Are you trustworthy?	Do you belong to a church? Do you go to church regularly?
Criminal Records	Have you ever been convicted of a felony? Within the last 5 years have you been convicted of, or released from incarceration for a misdemeanor which was <i>not</i> a first offense for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace?	Have you ever been arrested? Have you ever been convicted of a misdemeanor?
Dependents	No Questions	Do you have any children? Do you intend to have children? What child care arrangements have you made?

PRE-EMPLOYMENT QUESTIONS

Categories	Employers May Ask	Employers May NOT Ask
Education	What school, college, or vocational program did you attend? Graduate?	The answer to: "When did you attend or graduate?" should not be used to determine an applicant's age.
Experience	What is your work experience?	The answer to a question about date of work should not be used to determine applicant's age.
Handicap	No Questions *	Do you have any handicap? What kind of handicap do you have? How severe is your handicap?
Marital Status	What is your marital status? But only if both sexes are asked.	What is your maiden name? Or any other question which applies to one sex.
Military Experience	Are you a U.S. veteran? What is your U.S. military service history?	Are you receiving a service connected disability pension?
Organizations	Are you a member of any organization which advocates overthrowing the U.S. government by violent means.	Do you belong to the NAACP? B'nai B'rith? Or about any other organization the nature, name or character of which indicates the religion, race, or national origin of its members.
Race	No Questions *	What is your race? Color? Or that a photo accompany applications.
Relatives	No Questions	Where does your wife, husband, mother, father, or any other relative work or conduct business?
Religion	No Questions	What religious denomination, church, or synagogue do you belong to? What are your religious obligations? What religious holidays do you observe?
Sex	No Questions unless Commission has granted bona fide occupational qualification for the position. *	No questions unless the Commission has granted a BFOQ.

* Except for affirmative action purposes only.

The Public Accommodation Law

The Public Accommodation Law prohibits discrimination on the basis of race, color, religious creed, national origin, sex, ancestry, blindness, or deafness or any mental or physical disability.

A Place of Public Accommodation Includes:

Any place, whether licensed or unlicensed, which is open to and accepts or solicits the patronage of the general public.

Some Examples of Places of Public Accommodation:

Hotels, Shelters, Gas Stations, Restaurants, Beauty Parlors, Seashore Facilities, Retail Stores, Theatres, Places of Public Amusement, Recreation, Sports, Exercise or Entertainment, and Hospitals.

The Public Accommodation Law provides that all persons shall have the right to full and equal accommodations, advantages, facilities, and privileges, subject only to the conditions and limitations established by law and applicable alike to all persons.

Retaliation

It is illegal for any person, employer, labor organization or employment agency to retaliate against any person because he/she has opposed any practices forbidden under M.G.L.c.151B, or because he/she has filed a complaint, testified or assisted someone else in a Commission proceeding.

Federal Discrimination Rights

There are federal equivalents to the MCAD — the Equal Employment Opportunity Commission (EEOC) for employment discrimination cases and Housing and Urban Development (HUD) for housing discrimination cases.

The discrimination charges filed at the MCAD are automatically dual filed with the appropriate federal equivalents if there is concurrent jurisdiction, but only one of the agencies will conduct the investigation.

Filing a Charge of Discrimination

The Complaint Process - Step by Step

How to File

A charge of discrimination can be filed by either mailing a notarized complaint to or by visiting one of the Commission's offices.

When to File

Generally, a charge must be filed with the MCAD within six months of the alleged discriminatory act.

What Occurs After Filing

The Commission has designed standard operating procedures for the processing of complaints so that a full and fair investigation can be carried out in an expeditious manner.

Accordingly, the following steps are followed:

1. Intake

Upon visiting a Commission office, potential complaints are interviewed by an Investigator to determine jurisdiction (whether or not the Commission has the statutory authority to investigate) and all the relevant facts to draft a complaint.

The signed and notarized complaint is then sent to the Respondent, (employer, landlord, realtor, etc).

2. Investigation

A. The Commission utilizes an early resolution process (ERP — a composite of several investigative techniques which facilitate the investigation and settlement of the complaints.

Under ERP:

- The Respondent is usually contacted by the investigator within one week of the filing of the complaint.
- Investigator quickly sets a date for a fact-finding conference.
- A fact-finding conference is held to facilitate fact gathering and provide a forum for mediation of the complaint.

B. Other Investigation Techniques

If settlement does not occur after the fact-finding conference, investigation will continue until a determination can be made on all unresolved issues.

Techniques may include:

- Interrogatories
- On-Site Inspection
- Production of Documents
- Interviews

3. Determination

If settlement has not occurred when the investigation has been completed, a determination must be made of either:

- Lack of Probable Cause — a finding that more likely than not, there was not legal discrimination (this can be appealed within ten (10) days).
- Probable Cause — a finding that more likely than not, there was illegal discrimination. The case then moves to the legal unit for an attempt at conciliation.

4. Public Hearings

If conciliation fails, the case is certified for public hearing — a full adjudicatory hearing conducted by one of the three Commissioners, at which Commission counsel represent those complainants without private counsel.

5. Decisions

If the decision is in favor of the Respondent, the case is dismissed.

If the decision is in favor of the Complainant, the Commission may include orders to:

- In Employment Cases:
 - Award back pay
 - Award front pay (as if the person had the position sought)
 - Award emotional distress damages
 - Give the Complainant the next available position
 - Cease unfair employment practices
 - Require affirmative relief in recruitment, hiring, promotions, salaries, etc.
 - Report on compliance
- In Housing Cases:
 - Cease unfair housing practices
 - Award monetary damages reflecting difference in housing expenses incurred
 - Require affirmative outreach
 - Award emotional distress damages (damages in housing cases cannot exceed \$2,000)

6. Appeals

Single Commissioner decisions can be appealed to the Full Commission.

Full Commission decisions can be appealed to the state courts.

NOTES

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1. Denial of Justice

If a government does not act in accordance with the minimum standards of justice, it is said to be in denial of justice.

Law of Denial of Justice - a doctrine that says that a state which does not act in accordance with the minimum standards of justice is in denial of justice.

Denial of Justice - a doctrine that says that a state which does not act in accordance with the minimum standards of justice is in denial of justice.

2. Public Hearings

Public Hearings - a process by which a government is required to hold a public hearing on a matter of public interest before it can make a decision on the matter.

3. The Police

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